IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

DISTRICT:

CIVIL APPLICATION NO. 6135 OF 2005

IN

FIRST APPEAL (St.) NO. 26303 OF 2005

Office Notes,Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Ms. Aarti Mahajan with Mr. R. S. Apte for the Applicant.

Mr. D.N.Hungund for the Respondent.

CORAM: S.B.DESHMUKH, J.

DATE : 18TH AUGUST,2006

P.C.:

Heard the learned Counsel for the parties.

2. By this application, the applicant is seeking condonation of delay of about 188 days occurred in filing this first appeal. According to the office report of this court, the delay is of about 204 days in filing the first appeal.

3. The learned Counsel for the

applicant has invited my attention to paragraph 3 of the application. The certified copy of the impugned judgment, according to the applicant, was made available on 22nd September, 2005. The decree passed, which is under challenge in this appeal, is dated 16th October, 2002. The certified copy was applied by the applicant on 24th October, 2002 and the same was ready on 4th April, 2005. Ultimately, the certified copy was received by the applicant on 27th October, 2005.

4. According to the applicant, for filing of the appeal, sanction from the higher authorities, is necessary. The applicant, has also to seek legal advise, regarding filing of the appeal. In this process, this delay is occurred.

5. The respondent has filed reply affidavit. In paragraph no.5 of the reply affidavit, it is contended that the contention of the applicant that

the applicant took time for obtaining sanction from higher authority in the process of filing of the appeal is only for the sake of condonation of delay. According to the respondent, the delay is not bonafide, proper and application deserves to be rejected.

6. This application is filed by the applicant under Section 5 of the Limitation Act. The expression "sufficient cause", is considered by this Court, as well as the Apex Court time and again. The judgment of the Apex Court in the matter of The Collector, Land Acquisition, Anantnag and another v/s Mst. Katiji and others, reported in AIR 1987 SC 1353, is one of the judgment. It is also advisable to refer to the another judgment of the Apex Court in the matter of N. Balakrishnan v/s M. Krishnamurthi, reported in AIR 1998 SC 3222. The Apex Court, has referred these two judgments, recently, in the matter of Ram Nath Sao alias Ram Nath Sahu and Others v/s Gobardhan Sao and

others, reported in AIR 2002 SC 1202. In the matter of Ram Nath Sao (Supra), the Apex Court held, that expression "sufficient cause" within the meaning of Section 5 of the Limitation Act should receive liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is attributable to the parties concerned. In this matter of Ram Nath (Supra), the Apex Court has referred to paragraph 13, of the judgment, in the matter of N. Balakrishnan (supra). Paragraph 13 is reproduced hereinbelow:

> "It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But

> when there is a reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses."

7. Thus the Apex Court, has reminded us that in every such application for delay, there can be some lapse on the part of the litigant concerned. However, that is not enough to turn down his plea and shut the door against him.

8. Referred to the above, I have examined the explanation tendered in paragraph no.3 of the application. Undisputedly, the applicant is the Municipal Corporation, who is appellant in the first appeal filed in

this Court. There is a difference in process of taking decision for filing of the appeal in Court on behalf of the private litigant and on behalf of the Corporation like the present applicant. The procedure required, for filing of such appeal has to be undergone by the Officer concerned. Unless, the certified copy of judgment, are available to the applicant, probably, it was not possible for the authorities concerned to decide as to whether an appeal has to be filed or otherwise. For seeking advise from the higher authorities concerned, such certified copy are also necessary. In this view of the matter, the explanation tendered by the applicant is just, sufficient and bonafide.

9. Looking to the explanation, in my view, the costs is also not required to be imposed on the applicant, which is a Municipal Corporation.

10. In the result, the delay of 204

days is condoned. The civil application, accordingly, is allowed and is disposed of.

Sd/-

(S.B.DESHMUKH, J.)